

Message

From: Haymes, David [David.Haymes@dep.nj.gov]
Sent: 9/14/2020 4:17:21 PM
To: Zizila, Frances [Zizila.Frances@epa.gov]; Kandil, Shereen [Kandil.Shereen@epa.gov]; Louis Karagias [Louis.Karagias@law.njoag.gov]; Oconnell, Kimberly [OConnell.Kim@epa.gov]; Mellott, Deborah [Mellott.Deborah@epa.gov]; Kratina, Kevin [Kevin.Kratina@dep.nj.gov]; Defeo, Frank [Frank.Defeo@dep.nj.gov]; Abels, Jeanette [Jeanette.Abels@dep.nj.gov]; jbruno@cq-law.com; susan@mccurrielaw.com; Mayor Alberto Santos [mayor@kearnynj.org]; Saghafi, Farnaz [Saghafi.Farnaz@epa.gov]; Baxter, Pamela [baxter.Pamela@epa.gov]; Kloo, Ken [Ken.Kloo@dep.nj.gov]
CC: Mata, Carsen [Mata.Carsen@epa.gov]; Wilson, Eric [Wilson.EricJ@epa.gov]; Kopec, Slawomir [kopec.slawomir@epa.gov]
Subject: RE: Syncon Resins Superfund Site
Attachments: Syncon Negotiations - Sale Percentages and OM 9-14-2020 FINAL.pdf

All:

Attached, please find DEP's responses to the issues raised below. Looking forward to tomorrow's discussion.

Regards,

David
609-984-2902

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From: Zizila, Frances <Zizila.Frances@epa.gov>
Sent: Friday, September 11, 2020 01:09 PM
To: Kandil, Shereen <Kandil.Shereen@epa.gov>; Louis Karagias <Louis.Karagias@law.njoag.gov>; Haymes, David <David.Haymes@dep.nj.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Kratina, Kevin <Kevin.Kratina@dep.nj.gov>; Defeo, Frank <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; jbruno@cq-law.com; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>
Cc: Mata, Carsen <Mata.Carsen@epa.gov>; Wilson, Eric <Wilson.EricJ@epa.gov>; Kopec, Slawomir <kopec.slawomir@epa.gov>
Subject: [EXTERNAL] RE: Syncon Resins Superfund Site

Good afternoon,

During our last meeting, and in subsequent correspondence with the DEP on 9/1 and 9/2, EPA requested additional information on the following two issues:

1. documentation supporting past and current DEP O&M costs, and
2. the amount of DEP's liens secured by the Site property.

We have had many discussions regarding the amount that the DEP has expended performing O&M over the years and the numbers have varied considerably. During our last call, the DEP mentioned that O&M is projected to cost \$600,000/year, an estimate that exceeds prior amounts. We are currently awaiting the supporting documentation for past and current O&M expenditures.

Regarding the second issue, it is EPA's recollection that the amount of the DEP's liens as set forth in EPA's 1/23/20 email had not been previously disputed. EPA is seeking clarification and support for the DEP's recent position that its liens are higher than the \$7.02M calculated by EPA initially and on which all subsequent discussions were based.

In advance of our scheduled meeting on 9/15, we also wanted to share EPA's perspective on the matters that appear to be impeding our progress towards a settlement. It is important to not lose sight of the fact that the most efficient and timely way of resolving our respective liens (and for the DEP to have a new owner take over the O&M) is to reach a settlement here. As we've stated, everyone has an incentive to see the site property foreclosed on and sold to a redeveloper as soon as possible. The Town will benefit by collecting future taxes, the DEP will benefit by having the new owner perform the O&M for the OU1 remedy, and the EPA, as well as all parties, will benefit by recovering a portion of its past costs and by fulfilling our policy goal of promoting redevelopment and reuse of Superfund sites. Because we all are incentivized, we do not accept the DEP's tiered approach that is tied to the timing of the sale of the property and under which it would receive a higher percentage of the sale proceeds. We simply do not see the justification for this approach.

In contrast, the tiered approach that both the Town and EPA support, is justified based on the site enforcement history. EPA cannot, in good faith, ignore the provisions of the EPA consent decree with Farber which addressed sales and insurance proceeds 16 years prior to the DEP's settlement. We recognize the DEP's argument that it spent years and resources pursuing its litigation and EPA has shown flexibility with the amount of this second tier. We have adjusted the amount of the second tier down to \$2.5M from the original \$3.33M, and during our call, we also stated that we are open to entertaining a counter-offer from DEP on the amount of the second tier and requested that the DEP consider doing so. We believe that if progress is made on this issue, settlement will soon follow.

We look forward to our meeting next week and hope that progress is made toward settlement.

Sincerely,

Frances M. Zizila
Assistant Regional Counsel
EPA Region 2

From: Zizila, Frances

Sent: Wednesday, September 2, 2020 8:11 PM

To: Kandil, Shereen <Kandil.Shereen@epa.gov>; 'Louis Karagias' <Louis.Karagias@law.njoag.gov>; 'Haymes, David' <David.Haymes@dep.nj.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; 'Kratina, Kevin' <Kevin.Kratina@dep.nj.gov>; 'Defeo, Frank' <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; 'jbruno@cq-law.com' <jbruno@cq-law.com>; 'susan@mccurrielaw.com' <susan@mccurrielaw.com>; 'Mayor Alberto Santos' <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>

Cc: Mata, Carsen <Mata.Carsen@epa.gov>

Subject: RE: Syncon Resins Superfund Call

Updated sign-in sheet for 9/1/20 meeting.

From: Zizila, Frances

Sent: Wednesday, September 2, 2020 10:51 AM

To: Kandil, Shereen <Kandil.Shereen@epa.gov>; Louis Karagias <Louis.Karagias@law.njoag.gov>; Haymes, David <David.Haymes@dep.nj.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Putnam, Ed <ed.putnam@dep.nj.gov>; Kratina, Kevin <Kevin.Kratina@dep.nj.gov>; Defeo, Frank <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; O'Neill, Tom <Tom.O'Neill@dep.nj.gov>; jbruno@cq-law.com; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>
Cc: Mata, Carsen <Mata.Carsen@epa.gov>
Subject: RE: Syncon Resins Superfund Call

Good morning,

Attached, please find the sign-in sheet for yesterday's meeting. Please let me know if it is complete or in need of correction. Our next meeting will be on Tuesday, September 15th at 2:30. A meeting invite will be sent out later today.

Thank you,
Frances M. Zizila
Assistant Regional Counsel
EPA Region II